

Exhibit 2

To the Zakarin Reply Declaration
in further support of
Extreme's motion for Summary Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|------------------------------|---|------------------|
| TWELVE SIXTY LLC, ARON |) | |
| MARDEROSIAN and ROBERT |) | |
| MARDEROSIAN, |) | |
| |) | Civil Action No. |
| Plaintiffs |) | 1-17-cv-01479 |
| |) | |
| vs. |) | |
| |) | |
| EXTREME MUSIC LIBRARY |) | |
| LIMITED, a division of Sony/ |) | |
| ATV Music Publishing; |) | |
| EXTREME MUSIC LIMITED; |) | |
| VIACOM INTERNATIONAL, INC.; |) | |
| NEW CREATIVE MIX INC.; HYPE |) | |
| PRODUCTION MUSIC, |) | |
| |) | |
| Defendants. |) | |

Videotaped deposition of ROBERT MARDEROSIAN

July 20, 2018

New York, New York

Reported by:

Lisa Forlano

Job no: 22271

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Videotaped deposition of ROBERT
MARDEROSIAN, taken by and before Lisa Forlano, CCR,
CRR, RMR, at Pryor Cashman LLP, 7 Times Square, 40th
Floor, New York, New York, on Friday, July 20, 2018,
commencing at 10:10 a.m.

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ALSO PRESENT:

MORRIS RHODES, VIDEOGRAPHER

1 question is argumentative, it's calling for a
2 legal opinion and conclusion, and it's vague
3 and ambiguous.

4 Don, we've been going an hour, can we
5 take a break?

6 MR. ZAKARIN: Sure.

7 MR. MARDEROSIAN: Is that okay?

8 MR. ZAKARIN: I'm fine.

9 MR. MARDEROSIAN: We're here. We have
10 all day.

11 MR. ZAKARIN: I understand. I'm fine.
12 I've got plenty to do. But we'll move along.

13 VIDEO OPERATOR: We are now going off
14 the record; 11:10 a.m. This concludes tape
15 one of the deposition of Robert Marderosian.

16 (Brief recess.)

17 VIDEO OPERATOR: We are now back on the
18 record at 11:25 a.m. This begins tape 2 of
19 the deposition of Robert Marderosian.

20 BY MR. ZAKARIN:

21 Q Mr. Marderosian, did you read the 2010
22 contract before you entered into it?

23 A Yes.

24 Q Did you discuss it with counsel?

25 A Yes.

1 Q Who was the counsel you discussed it
2 with?

3 A At the time -- I don't really remember,
4 to be honest with you.

5 Q We can leave it blank. If it occurs to
6 you later --

7 A That's fine.

8 Q Did you understand its terms or have
9 them explained to you by counsel?

10 A Implicitly, yes.

11 Q I'm not sure what you mean by
12 "implicitly."

13 MR. MARDEROSIAN: Let me just object
14 for the record. It's calling for a legal
15 conclusion, and it's vague and overbroad.

16 BY MR. ZAKARIN:

17 Q I'm not asking what you and your
18 counsel discussed, I'm just asking whether you
19 understood its terms or had them explained to you by
20 your counsel?

21 A Yes.

22 MR. MARDEROSIAN: I'm just going to
23 object that it's vague and overbroad as to
24 whether some of the provisions are vague as
25 well.

1 BY MR. ZAKARIN:

2 Q Did you ask any questions of Viacom
3 about the contract?

4 A In some phone conversations, yeah.

5 Q Who did you have phone conversations
6 with?

7 A Jose Cuello and Ernesto Elias -- Elias.
8 I don't know how to pronounce his name.

9 Q Did you read the 2011 contract before
10 you signed it?

11 A Yes, I did.

12 Q Did you have counsel as well that you
13 worked with on the 2011 contract?

14 A Yes, we did.

15 Q Was it the same counsel?

16 A I believe it was.

17 Q We'll leave it blank for his
18 identification.

19 A Thank you.

20 Q Did you understand these terms or have
21 them explained to you by counsel?

22 MR. MARDEROSIAN: I'm going to
23 objection to the form. It calls for a legal
24 conclusion; it's vague and overbroad.

25 BY MR. ZAKARIN:

1 Q You can answer.

2 A We were told that we were receiving a
3 writer's share and 50 percent of the gross income.

4 MR. ZAKARIN: Let's mark as Exhibit
5 2 -- let's mark as Exhibit 2 what's been
6 previously marked 47 times in this case. And
7 we'll mark it again as RM-2.

8 (Blanket Composer Agreement (Direct)
9 document, VIACOM_0000238 - VIACOM_0000252,
10 was marked RM-2 for identification.)

11 BY MR. ZAKARIN:

12 Q I'm not going to question you too
13 deeply about this, but can you identify this as the
14 2010 contract?

15 A Let me see which version this is. This
16 is signed by Ms. Chinkes, it looks like.

17 Q It is.

18 A Yes, it looks like a copy of it. The
19 schedule is blank on the back. Yes.

20 Q And that's your signature for
21 TwelveSixty? Same page.

22 A Yes, as you can see at the top.

23 Q And it's your signature?

24 A That is correct.

25 Q For your own name as well?

1 - PLTF007982, was marked RM-4A for
2 identification.)

3 MR. MARDEROSIAN: This is what exhibit?

4 THE WITNESS: 4A.

5 BY MR. ZAKARIN:

6 Q Now we're into August of 2013 --

7 A Yes.

8 Q -- which is more than a year after
9 May 2012, by my count, right?

10 A Yes, we are.

11 Q And as of this point, you still have
12 not fully delivered all of the work, right?

13 A No, and for the reasons I've explained
14 earlier.

15 Q I understand. I'm just stating. And
16 you have back and forth with Jaron Lum quite a bit
17 in this e-mail exchange, correct?

18 A Yes.

19 Q Some of which, for whatever reason, I
20 can't see in this e-mail chain, these were produced
21 by you, there's hidden text. I don't know why that
22 is.

23 A Which page are you on?

24 Q If you look from 7982, there's
25 e-mails --

1 A 7982.

2 Q Bottom. There should be a Bates stamp.

3 A This here?

4 Q Yeah.

5 A That's confidential. That was an
6 attorney that we were speaking with at the time.
7 That's why that's not in there, sir.

8 Q Oh, see, that hasn't been identified as
9 privileged, as redacted. Usually what you should
10 have done is redacted --

11 A I'm working with the best I got.

12 Q I understand. I'm just saying, when I
13 get something like that, I don't know what it is and
14 I see that it's missing, I don't know why it's
15 missing, and if it says that it's redacted because
16 it's attorney-client privilege material, I can cope
17 with that, because that's what is supposed to be
18 done.

19 A Ask me anything.

20 Q I'm trying. Jaron Lum offers up, at
21 the top, on August 12, to reduce your obligation,
22 correct?

23 A Yes, he does.

24 Q Okay.

25 A As you can see, he says, Joe and I

1 discussed. So Mr. Cuello was involved as well.

2 Q And you accepted the reduced
3 obligation, didn't you?

4 A We actually accepted even less reduced
5 obligation at Mr. Cuello's enhesence (sic) -- excuse
6 me -- how do you say it?

7 Q Behest?

8 A Behest. Thank you very much.

9 Q But it was still a reduced obligation,
10 and they paid you, nonetheless, in full, did they
11 not?

12 A The contract was closed out by Mr.
13 Cuello for the delivery of 10 drone tracks, of which
14 they never identified to us what they did with them,
15 and that closed out the second, which you referred
16 to, I believe as RM-3; again, before Mr. Cuello's
17 termination.

18 Q So you were fully paid, though,
19 regardless of the fact you didn't fully deliver all
20 of the originally contracted four works?

21 MR. MARDEROSIAN: I'm going to object.

22 It mischaracterizes the testimony.

23 BY MR. ZAKARIN:

24 Q Am I correct?

25 A Incorrect, sir. We were paid because

1 agreement, looking at paragraph 6B. And maybe it's
2 easier to read.

3 MR. MARDEROSIAN: Of the 2011
4 agreement?

5 THE WITNESS: '10, I believe he said.

6 BY MR. ZAKARIN:

7 Q 2010, it's -- you're right, it's hard
8 to read, but it's 6B. And it's over on to page 240.
9 It's the same language I think you read before.
10 Notwithstanding, towards the end, anything to the
11 contrary where it is or may, from time to time, be
12 unlawful, et cetera.

13 You see that language?

14 A I do see that language.

15 Q That's also where the performing rights
16 society doesn't maintain a regular system of
17 collecting performance fees --

18 A Yeah.

19 Q -- no performance fees would be
20 payable?

21 A To be clear, my brother and I are very
22 aware of those limitations that PROs do put on
23 collecting in areas where it is unattainable at
24 times. We're aware from the start.

25 Q Now, long before this lawsuit was

1 filed, BMI had told you that it did not collect and
2 pay for promotional uses, at least for a period of
3 time and at least for certain networks or production
4 entities, didn't it?

5 A No, that's incorrect.

6 Q They never told you that?

7 A No, they did not.

8 MR. ZAKARIN: Let's mark as Exhibit 7,
9 I believe, an e-mail in, I think, 2015.

10 BY MR. ZAKARIN:

11 Q This is an exchange between you and
12 Antonella, who testified yesterday.

13 A Yes, I know it well.

14 Q I would hope you would. We have to
15 have the court reporter mark it first.

16 A Sure.

17 MR. ZAKARIN: This will be RM-7.

18 (e-mail chain was marked RM-7 for
19 identification.)

20 BY MR. ZAKARIN:

21 Q Turn, if you would, and this chain of
22 e-mails started in November of -- maybe even
23 earlier, but I think it's November of 2015.

24 A Yes.

25 Q And you were asking Ms. DiSaverio,

1 D-i-S-A-V-E-R-I-O, you were asking her about
2 certain, as you said, promotional campaigns of your
3 works, correct?

4 A Yes, I am.

5 Q And that was your e-mail. "I have a
6 couple of issues with some promo campaigns with
7 respect to your works on MTV, Viacom and the History
8 Channel," correct?

9 A Yes. Correct.

10 Q Okay. And the first one was "Like a
11 Serenade." That's Lonely Orchard; that's a
12 self-published work?

13 A Yes, it is.

14 Q And then she thinks she knows the
15 second one on "Teen Mom." That's Lonely Orchard as
16 well?

17 A That is.

18 Q And the third one was "Sets You Free,"
19 which was one of the works under the 2010-2011
20 agreement?

21 A You're correct.

22 Q Okay. And so you asked about this.
23 And if you turn again to the next page forward.

24 A I'm with you.

25 Q Okay. On November 12, which is the

1 next day, Ms. DiSaverio writes to you, "We weren't
2 paying for promos on MTV back then." And then she
3 said, "At this point we can only go back three
4 quarters from the last distribution. Have these
5 promos aired from the third quarter 2014 through the
6 second quarter 2015?

7 So she did say to you that MTV -- that
8 BMI was not paying for promos on MTV at that time,
9 correct?

10 A She did. The reason why I questioned
11 her on those was because we had already been paid
12 for promos on MTV prior to when she says that they
13 started paying. So it was in question to why we
14 hadn't received payment yet.

15 Q She was telling you that at least while
16 you may have received some payments on promos on MTV
17 channels, she was telling you that BMI was not
18 paying, at least as a general proposition, for
19 promos on MTV at that time?

20 A That's her statement here.

21 Q And you understood what she was saying?

22 A Absolutely.

23 Q You didn't think she was lying to you,
24 did you?

25 A I think she was mistaken, but no, I

1 didn't think she was trying to lie to us at all.

2 Q And you thought she was telling you
3 honestly what the state of facts was at the time?

4 A As I stated, I found Antonella to be
5 very helpful.

6 Q Now, turning to the second page of this
7 exhibit. Now we're on November 19, Ms. DiSaverio
8 wrote to you because now we're dealing with the
9 promo campaign with respect to the Chrysler issue?

10 A Correct.

11 Q This was "Sets You Free"?

12 A Yes, sir.

13 Q And she said, I'm pretty sure that we
14 weren't getting promo data from the History Channel
15 back in 2012. I'll confirm with my colleague and
16 get back to you as soon as I hear.

17 Did she get back to you?

18 A From her colleague, yes, she does. She
19 clarifies it here in further e-mails.

20 Q And she told you that they were not
21 collecting for promo uses from the History Channel
22 at that time, didn't she?

23 A Well, she gets back to me if we're
24 moving forward from the comment that you just made
25 in her e-mail here, is, she tells me that the song

1 "Sets You Free," which I'm asking about, which is
2 the duplicate title of one of Mr. Emanuel's songs,
3 is not listed for us anywhere on the cue sheets for
4 the History Channel series, The Men Who Built
5 America, which I'm asking about.

6 Q And when she was saying it was not in
7 the cue sheets, it was not an in-program use?

8 A She said it was neither.

9 Q It was neither an in-program use or --

10 A Let's go through the e-mails. We can
11 read them through, Mr. Zakarin. I believe I'm
12 asking her if it was a promo. I'm pretty clear on
13 that, in which she says --

14 Q What you said is, on November 19 is,
15 From what I understand and was told, this was an
16 in-programming use.

17 A Yes.

18 Q Who told you that?

19 A Joe Cuello, on the phone, after
20 Mr. Emanuel told us that he was going to do nothing
21 to help us to receive payment for that spot.

22 Q And did you ever confirm one way or the
23 other whether it was an in-program use as opposed to
24 a promo, or some other use?

25 A Yes, I did.

1 Q What did you confirm?

2 A It's a promo use. I found it as a
3 standalone commercial that's on YouTube.

4 Q Okay. And if it was a promo use, as
5 you said, Ms. --

6 A DiSaverio.

7 Q Yes. Did she ever confirm to you that,
8 in fact, they were not collecting from the History
9 Channel for promo uses at that time?

10 A At this time Antonella --

11 MR. MARDEROSIAN: Let me just object
12 here. Again, it's a misstatement of the
13 evidence. I believe the evidence is dating
14 back to 2011, Don, whether or not they were
15 asking cable networks to start reporting on
16 promos as opposed to whether or not BMI was
17 paying on them.

18 MR. ZAKARIN: I think the testimony was
19 they didn't pay or allocate if they didn't get
20 information. But I'm trying to be simpler in
21 the questions. I should be more precise. And
22 you're right. I should probably say that they
23 weren't receiving information from A & E or
24 the History Channel with respect to promo uses
25 at that time and, hence, BMI was not paying

1 for such uses or allocating for promotional
2 uses. Correct?

3 THE WITNESS: That's correct to say.

4 And I believe they were asking because we felt
5 it was the obligation for us to receive a
6 payment from BMI for any use of our music.

7 BY MR. ZAKARIN:

8 Q I understand.

9 A Yes.

10 Q Notwithstanding the provision of the
11 agreement that we've looked at before, which is the
12 notwithstanding if BMI doesn't have a regular
13 practice of collecting for such uses --

14 MR. MARDEROSIAN: Again, it's a legal
15 conclusion.

16 MR. ZAKARIN: Okay.

17 MR. MARDEROSIAN: I'll object, but I'm
18 objecting just for the record.

19 MR. ZAKARIN: The witness has to
20 actually do more than shake his head.

21 THE WITNESS: No, no, I understand
22 completely what you're saying, and I agree
23 with you, although I don't find that US
24 performances of the work in any way should be
25 limited by BMI or PRO.

1 in foreign market.

2 Q I don't have it in front of me. I
3 could bring it down later. But you weren't at the
4 TuneSat deposition.

5 A I was not able to make it.

6 Q I'm not blaming you for it. But
7 TuneSat testified that the audio clips that they
8 provide to you and the data enables you to tag the
9 type of uses that those audio clips are being put
10 to.

11 A Yes, it does.

12 Q Okay. And you and your brother went
13 through those audio clips, correct?

14 A Listened to each and everyone.

15 MR. MARDEROSIAN: I think the question
16 is vague as to what was meant by tagging. And
17 you might want to ask him about that.

18 MR. ZAKARIN: I will.

19 MR. MARDEROSIAN: Just so you know,
20 because they've worked a lot with that
21 TuneSat.

22 MR. ZAKARIN: I have no doubt about it.

23 BY MR. ZAKARIN:

24 Q Now, you didn't have to listen to every
25 single audio clip that TuneSat provided to you

1 because they bunch them, didn't they?

2 A They do. I understand that, but we
3 chose to listen to each and every audio clip. I
4 guess we have a lot of free time.

5 Q I'm not going to say a word.

6 So you did listen to each and everyone
7 of them, even though they bunched them?

8 A That's correct.

9 Q By the way, were you able to verify
10 that their bunching of them, or bundling of them
11 into categories, was correct --

12 A I found everything to be accurate from
13 that company.

14 Q And we've looked at a spreadsheet that
15 TuneSat produced, which I think reflects your
16 tagging of -- which means identifying the type of
17 use.

18 A I understand the term.

19 Q Okay.

20 MR. MARDEROSIAN: Just for the record,
21 again, I'm going to object that that somewhat
22 mischaracterizes what he said, what is meant
23 by tagging, to put that little mark on the cue
24 sheet. It wasn't explained in the depo and I
25 got the point of your question, but I'm not

1 ARON MARDEROSIAN: How was it spelled?

2 BY MR. ZAKARIN:

3 Q "Good Life"?

4 A That's the first one, yes.

5 Q That's written by Werner Kenny?

6 A Kenny Werner, yes.

7 Q Kenny Werner would be right. It could
8 live a been a drone. Also --

9 A Published by Bayham, yes.

10 Q Yes. And then Kenny Werner AETN?

11 A "The Good Life".

12 Q Correct.

13 A His title change is there for the AETN
14 version.

15 Q And there's also "The Good Life" by
16 Robin Loxley and Slow Wave?

17 A That is correct.

18 Q Okay.

19 A If I can make note there on the AETN --

20 ARON MARDEROSIAN: And PRS by the way.

21 THE WITNESS: On the AETN version of
22 "The Good Life" for Kenny Werner, his "Good
23 Life" registration at BMI, Nova is solely
24 registered to Bayham with the work number
25 ending in 6492. That is AETN "The Good Life"

1 work number ending in 6505 has now been
2 changed to AETN "The Good Life," Kenny Werner.
3 Now it's biographically entertaining music. I
4 take it that's their partnership with A & E
5 where they profit share in the publishing of
6 these works.

7 BY MR. ZAKARIN:

8 Q They share the publisher share of
9 public performance income, correct?

10 A That would be a profit, yes.

11 Q We've gone through that.

12 A Okay.

13 Q And then there's "Good Life" also by
14 John Fulford?

15 A Yes.

16 Q Which appears to be Sony ATV Harmony,
17 which is not Extreme, correct?

18 A Is Extreme not a Sony ATV company?

19 Q Sony and ATV are different -- Sony ATV
20 and Extreme are different companies.

21 A Oh, okay. It's just MTV songs on that
22 one. gotcha.

23 MR. MARDEROSIAN: All of the
24 publication information indicates that Extreme
25 is part of Sony ATV.

1 MR. ZAKARIN: Extreme is owned by Sony
2 ATV. It's a different company.

3 BY MR. ZAKARIN:

4 Q And then we have your "Good Life".
5 Okay? So you're aware, aren't you, looking at
6 Exhibit 39 that there are -- again, the screen shot
7 I took, 1,013 -- just titles at BMI that are "The
8 Good Life". Just at BMI.

9 A I'm completely aware of that. The
10 point being our song has turned in "It's a Good
11 Life". Now, per Kelsey Dewald's e-mail the practice
12 is Extreme needed to change titles, I'm questioning
13 as to why they had to remove "it" and "a" and change
14 it to "The Good Life" and AETN "The Good Life"
15 knowing that all the titles you just read from this
16 document for all the writers, including Kenny Werner
17 and Robin Loxley already existed within the Extreme
18 library. Why would they need to duplicate the title
19 for our work, sir? I would say that is evidence
20 that could divert royalties away from us.

21 Q I'm just looking to see if I have
22 anything else that I want to do.

23 When BMI reported to you, I think you
24 mentioned this before, it reported to you for songs
25 that you self-publish, as well as songs that were

1 published by Extreme, as well as songs that were
2 published by Songs of Puke and the Brothers Heathen
3 before you took control of the Brothers Heathen,
4 correct?

5 A Yes.

6 Q Did you ever compare the quantum of
7 performance income that was being reported to you by
8 way of example in programs on cue sheets where there
9 were both songs published by Extreme and songs
10 published by you within the same program?

11 A So your question is, if I'm
12 understanding correctly, your question is whether or
13 not on the same cue sheet if an HM work and one of
14 our individually owned self-published works existed
15 on the same program, the quantification of the
16 amount paid for our work versus one the Extreme
17 works; is that correct?

18 Q Yes, did you ever do that comparison?

19 A I can't say I did that comparison. My
20 comparisons were more along the lines of which works
21 were being used and which ones weren't being
22 reported.

23 Q As you sit here now, you're not aware
24 of any disparities in how much you were paid when
25 your self-published works were in the same program

1 as works published by Extreme?

2 MR. MARDEROSIAN: Writer's share in
3 terms of performance royalties?

4 MR. ZAKARIN: Correct. We're talking
5 about the BMI statements.

6 THE WITNESS: The disparity came from
7 not so much paid, but the disparity came from
8 what's actually being reported.

9 BY MR. ZAKARIN:

10 Q Let's just stay with the question I
11 asked because it will be simpler and we'll actually
12 get done.

13 MR. MARDEROSIAN: Again, you're
14 arguing.

15 MR. ZAKARIN: I'm not.

16 MR. MARDEROSIAN: This is how he
17 chooses to respond to your question.

18 MR. ZAKARIN: Mick, I'm entitled to get
19 a response to the question.

20 BY MR. ZAKARIN:

21 Q It's simply, you're not aware as you
22 sit here now of any disparity between what you were
23 paid on a particular show in which your
24 self-published works were used and which -- in which
25 Extreme works were also used?

1 irrevocable right to do so and without our
2 permission.

3 Q My question is this, in reference to
4 the section that I just read --

5 A Yes.

6 Q -- when you're referring to HM Work, is
7 it your understanding based on the language of this
8 provision that an HM Work is a work as to which this
9 Hype Music Option had been exercised?

10 A As I said earlier --

11 MR. MARDEROSIAN: Just object, calls
12 for a legal opinion.

13 THE WITNESS: As I said earlier, I'm
14 simply referring to them as a Hype Music Work.

15 BY MR. HWANG:

16 Q Okay. Why are you referring to them as
17 a Hype Music Work?

18 A If you look on the Extreme website
19 under HYPE, there's four songs listed there. Those
20 are HYPE Works.

21 Q Okay. So other than those four
22 songs -- withdrawn.

23 How many songs did Plaintiffs deliver
24 pursuant to either the 2010 composer agreement or
25 the 2011 composer agreement?

1 A Total, 124 works completed all
2 agreements, including the Short Form Amendments.

3 Q Okay. So other than the four works,
4 with respect to the other 120 works, are those not
5 HM Works?

6 MR. MARDEROSIAN: I'm just going to
7 object. It calls for a legal opinion and
8 conclusion.

9 THE WITNESS: I don't believe they are.
10 I don't know why they're in what's called
11 Mixtape. There's only four works in the Hype
12 Music Library.

13 BY MR. HWANG:

14 Q Okay.

15 A And again, the reason why I say 124 as
16 opposed to 114 is because we turned in 10 to close
17 out Agreement II per Mr. Cuello.

18 Q We'll get into that. So when you
19 referenced the HM Works, you're referring to the
20 four works that are classified as being part of the
21 Hype Music Library and not the other 120, correct?

22 A As I stated earlier, Mr. Hwang, they've
23 been referred to throughout this whole litigation,
24 including in e-mails, and in these agreements as HM
25 Works. It's a loose term. I'm not specifying them

1 in any category. I'm just referring to them as HM
2 Works.

3 Q Is there any other source from which
4 you derive that term HM Works other than the
5 Section 5.1?

6 A I've heard it thrown around in
7 conversations that I've had with Viacom employees.

8 Q Was it your understanding that the
9 rights and obligations with respect to all 124 works
10 delivered pursuant to the 2010 Composer Agreement and
11 2011 Composer Agreement, including the Short Form
12 Agreements thereto had been assigned to MTVN and
13 Extreme?

14 MR. MARDEROSIAN: Object, calls for a
15 legal opinion and conclusion. The question is
16 compound.

17 THE WITNESS: I think I made it clear
18 earlier what my statement was on the first 50
19 works when they were transferred improperly.

20 BY MR. HWANG:

21 Q Okay. What about with respect to the
22 other 74 works?

23 A I believe that the four works that fell
24 under this agreement that are included on the
25 Extreme site under HYPE are the only works that

1 pertain to HYPE. The other works I think executed
2 -- excuse me, the Hype Music Option, they optioned
3 that. So those would probably be included in this
4 agreement as well.

5 Q I'm sorry, I didn't understand your
6 testimony. What other works were optioned and you
7 referenced the Hype Music Option?

8 A You might want to fix your microphone.

9 Q I didn't understand your testimony.
10 You referenced the Hype Music Option and you said
11 they optioned that. Who optioned what under the
12 Hype Music Option?

13 A All the Short Form Agreements that came
14 from your clients Viacom all optioned the Hype Music
15 Option 5.1 in the Short Form Agreement.

16 Q Okay. And you delivered additional
17 works other than those referenced in the Short Form
18 Agreements, didn't you?

19 A Specify.

20 Q Okay. So let me break this down. You
21 have the 50 works under the 2010 Composer Agreement
22 in one bucket?

23 A Correct.

24 Q You have what I believe is 60 songs
25 that were delivered pursuant to the four Short Form

1 Agreements executed subsequent to the execution of
2 the 2011 Composer Agreement; is that right?

3 A Uh-huh, and you're leaving out the four
4 songs, also, that were the Hype songs?

5 Q That's the second bucket that I'm
6 referring to.

7 A Well, you said 60 and 60 would include
8 56 Punk'd Works, plus four additional works, theme
9 song for "Lil Duval," "Ain't That America"; theme
10 song for "Buck Wild," including two additional works
11 commissioned for "Buck Wild." That's 60.

12 Q Right.

13 A Plus the four works that are -- that
14 Mr. Zakarin described as Hypo 25, the Scavenger's
15 EP.

16 Q What four songs are those?

17 A "Mulholland Drive," "Cold Water
18 Canyon," "Figueroa Street" and "Little Girl Lost".
19 Plus the 50 upfront.

20 Q Okay. So you have the 50 upfront?

21 A Uh-huh.

22 Q You have the 60 delivered pursuant to
23 the four Short Form Agreements and then you have the
24 four HYPE music songs that were on the Scavenger's
25 EP?

1 A Correct.

2 Q And you testified that there were a
3 total of 120, so they were what, 124?

4 A Plus the additional 10 songs Mr. Cuello
5 requested of us to close out the second agreement so
6 he could sign off on it.

7 Q Okay. So if I understand your
8 testimony as to the first 50 songs, the Hype Music
9 Option was not exercised?

10 A Say it again.

11 Q If I understand your testimony, the
12 Hype Music Option was not exercised as to the first
13 50 songs?

14 MR. MARDEROSIAN: I just object. It's
15 vague. It calls for a legal opinion and
16 conclusion.

17 THE WITNESS: I don't see anywhere
18 where it was in this transfer. No composure
19 signatures.

20 BY MR. HWANG:

21 Q Okay. And with respect to the 60 songs
22 that were delivered pursuant to the four Short Form
23 Agreements, the Hype Music Option was or was not
24 option?

25 A I believe the Hype Music Option was

1 exercised per those agreements. It's clearly marked
2 in the first paragraphs of those agreements.

3 Q Okay. With respect to the four tracks
4 on the Scavenger's EP was the Hype Music Option
5 exercised or not?

6 A I don't believe that Hype Music Option
7 was exercised because it falls under this agreement,
8 which is clearly labeled HYPE Master Agreement.
9 Therefore, those songs would fall under the HYPE.

10 Q Okay. Those were HM Works?

11 A You could say that, yes.

12 Q Okay. What about with respect to the
13 last 10 songs that you delivered, was the Hype Music
14 Option exercised as to those songs?

15 A As I indicated, Mr. Cuello did not
16 instruct us what he did with the songs, but they
17 were delivered under this agreement, the Hype Master
18 Agreement, to close it out so Mr. Cuello could sign
19 off, pay us our second half to complete the
20 agreement.

21 Q And you were, in fact, paid the second
22 half?

23 A Yes, we were.

24 Q And that's the \$10,000 referenced in
25 the --

1 A This agreement was for a total of
2 \$20,000. So it was 10,000 upfront, 10,000 on the
3 back half of completion.

4 Q You were paid all \$20,000, correct?

5 A We completed and we were paid all
6 \$20,000.

7 Q Are you aware that a breach of contract
8 claim has been asserted against Extreme, the two
9 Extreme defendants in this action?

10 A I believe I am, yes.

11 MR. MARDEROSIAN: Objection, calls for
12 a legal opinion and conclusion.

13 THE WITNESS: Yes.

14 BY MR. HWANG:

15 Q That's your legal conclusion -- that's
16 your legal opinion, that you are aware?

17 A Am I lawyer?

18 MR. MARDEROSIAN: It's not that he's
19 aware, it's what you mean by breach of
20 contract claim.

21 BY MR. HWANG:

22 Q So you're aware that a breach of
23 contract --

24 MR. MARDEROSIAN: Don't argue with the
25 witness, please.

1 obviously not satisfied with his responses.
2 You don't accept them and you're just
3 harassing. It's past 8:00, I believe now.
4 So, you know, you need to get to your
5 questions and quit repeating yourself and quit
6 arguing with the witness.

7 MR. HWANG: I think the witness was
8 just about to answer, unless I'm wrong.

9 THE WITNESS: I was going to say I'm
10 not going to testify on behalf of Mr. Cuello.
11 You should have asked him that when he was
12 here.

13 MR. MARDEROSIAN: You represented him,
14 he's your client. He retained you, according
15 to his testimony.

16 MR. HWANG: Thank you, Mick.

17 BY MR. HWANG:

18 Q Okay. When did you first learn that
19 the songs at issue in this case were going to be
20 placed in the Mixtapes library?

21 A I believe Mr. Elias, if I'm not
22 mistaken, sent an e-mail that was produced that said
23 that the tracks were put in the Mixtape. That's
24 where we first learned of it.

25 Q And when was that?

1 A I can't recall the date on the e-mail,
2 sir. I don't have it in front of me. If you have
3 it there, I'm happy to take a look at it.

4 Q We saw an e-mail earlier. It was dated
5 September 2, 2011 and it related to the songs for
6 the proposed titles, "Pimps and Hose," H-O-S-E, and
7 "Thug Paraphernalia."

8 Do you recall that e-mail chain?

9 A Do you have the number there? I can
10 pull it up.

11 Q I have the e-mail in front of me. I
12 don't have the exhibit number. We can get it,
13 though.

14 MR. MARDEROSIAN: Was it marked today?

15 MR. HWANG: It was marked today, yes,
16 and we can see if we can find it.

17 MS. SMITH: It's RM-14.

18 THE WITNESS: Thank you, Erin.

19 MS. SMITH: You're welcome.

20 BY MR. HWANG:

21 Q Okay. You recall Mr. Zakarin asked you
22 about the reference in Kelsey Dewald's September 2
23 e-mail --

24 A Uh-huh.

25 Q -- to these Mixtape additions. Do you

1 see that?

2 A Which part are you reading, Mr. Hwang?

3 Q I'm looking at the September 2, 2011
4 e-mail from Kelsey Dewald to you, towards the bottom
5 of that first page of this exhibit.

6 A Where she says, "I can understand the
7 concern of turning people off"?

8 Q Correct. That paragraph, if you look
9 on the fourth line down, there's a reference to,
10 quote, these Mix tape addition, end quote. Do you
11 see that?

12 A Yes.

13 Q And she's referring by these Mix tape
14 additions to tracks you had delivered, pursuant to
15 one of the agreements at issue, correct?

16 A Yes, that's correct.

17 Q So is it safe to say that by this time
18 at least you were aware that at least some of the
19 songs delivered by Plaintiffs, pursuant to any of
20 the agreements at issue, would be placed in the Mix
21 tape library?

22 A By September of 2011, yes, we were
23 being told they were being put in something called
24 Mix tape. We weren't aware of it because we didn't
25 sign that agreement. We signed a Hype agreement.

1 Q Did you object to that?

2 A I don't think I did.

3 Q Did you feel it was a violation of the
4 obligations owed to you by any of the Defendants in
5 this action?

6 MR. MARDEROSIAN: Objection.

7 BY MR. HWANG:

8 Q -- for these songs to be placed in the
9 Mixtape library?

10 MR. MARDEROSIAN: Calls for a legal
11 opinion.

12 THE WITNESS: Mr. Hwang, if I can be
13 clear with you, I think you can see by reading
14 these e-mails I tried to make this entire
15 process with MTV pretty easy. So I didn't
16 make many objections along the way. I tried
17 to make it as smooth as possible. I don't
18 know that I need to be so petty as to argue
19 about them mentioning that these Mixtape
20 additions will work amazingly in catalog.
21 Now, the catalog is very vast over at Extreme.
22 You described several volumes yourselves.

23 BY MR. HWANG:

24 Q So you didn't raise any objections?

25 A No, I did not, sir. I tried to make

1 this process smooth.

2 Q And you say in your response to
3 Ms. Dewald, I'm reading in the middle of the second
4 paragraph, quote, Believe me when I say how grateful
5 we are to be a part of this library and the whole
6 process, end quote.

7 Was that an accurate reflection?

8 A Yes, it was.

9 Q And by "this library," were you
10 referring to the Mixtape library?

11 A At this time, if that's the way
12 Ms. Dewald described it, then yes, I was. As you
13 can see, like I said through all my e-mails, I
14 always thank people. I'm always very appreciative
15 throughout the process. Even when I'm asking them
16 to pay me, I say thank you.

17 Q That's especially when you should say
18 thank you, right?

19 A You'd be surprised. But I'm glad you
20 brought that up. I'd like to discuss that, if we
21 could, for a second. You read the quote, Believe me
22 when I say how grateful we are to be a part of this
23 library and the whole process and how appreciative
24 we are of you for all your efforts and hard work on
25 our behalf. It does not go unrecognized from this

1 A Not that I can recall. I may have
2 asked questions about statements or certain works on
3 episodes, but I don't recall asking for blocks of
4 cue sheets like this.

5 Q Okay. Just a couple of wrapup
6 questions. With respect to the TuneSatSat data that
7 you received from TuneSatSat, there was a
8 spreadsheet that we looked at, or an excerpt of
9 which we looked at at TuneSat's deposition.

10 Do you recall that?

11 A I do.

12 Q You attended that deposition, right?

13 A I did not.

14 Q You're aware of the spreadsheet that
15 I'm referring to?

16 A I am. It's provided in the production
17 by TuneSatSat.

18 Q Okay. You testified, I think, earlier
19 that you and your brother had listened to each of
20 the audio files TuneSat provided?

21 A We have. Both on the side and for what
22 TuneSatSat provided in their production.

23 Q Do you know how many of -- withdrawn.
24 How many detections did TuneSatSat report?

25 A I believe in the sheet that is part of

1 that production, was 31,296. That number has grown
2 since.

3 Q Okay. You listened to all 31,000-plus
4 of those audio files?

5 A As Don said, a lot of them are grouped
6 together; but yes, we have.

7 Q Okay. And of those detections, how
8 many, if you know, were for in-program uses?

9 A Without my notes in front of me, tough
10 to say off the top of my head. I'd say a fair
11 amount of them.

12 Q Do you know? Can you give me a range?

13 A No. I can't give you a range.

14 Q You haven't quantified it?

15 A No, there's an expert that's putting
16 that together for this.

17 Q Is that expert Bob Cohen?

18 A That's between you and my attorney.
19 You're welcome to ask him, Mr. Hwang. I will make
20 note, though, that the amount of usages detected in
21 these TuneSat are far less than in the cue sheets
22 that were turned in and far less than the cue sheets
23 that were turned in to Extreme.

24 MR. MARDEROSIAN: And the answer is
25 there are auditing consultants that I have

C E R T I F I C A T I O N

I, LISA FORLANO, a Certified Realtime Reporter, Certified Court Reporter and Notary Public, do hereby certify that I reported the deposition in the above-captioned matter, that the said witness was duly sworn by me; that the foregoing is a true and correct transcript of the stenographic notes of testimony taken by me in the above-captioned matter.

I further certify that I am not an attorney or counsel for any of the parties, not a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

LISA FORLANO, CRR, CCR #XI01143

Dated: August 2, 2018

JURAT

I, ROBERT MARDEROSIAN, the witness herein,
the foregoing testimony of the pages of this
deposition, do hereby certify it to be a true
and correct transcript, subject to the corrections,
if any, shown on the attached page.

ROBERT MARDEROSIAN

Subscribed and Sworn to before me
this _____ day of _____ 2018.

Notary Public